

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2751  
Summary Calendar

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JOE D. BANNING,

Plaintiff-Appellant,

VERSUS

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA H 88 2381)

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March 17, 1993

Before HIGGINBOTHAM, SMITH, AND DEMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:\*

Joe Banning's house burned. He made a fire insurance claim with State Farm Fire and Casualty Company ("State Farm"), which refused to pay because it believed he had committed arson for the purpose of collecting insurance proceeds. Banning sued State Farm, and a jury rendered a verdict for State Farm, specifically answering that Banning had been involved in the setting of the fire.

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\* 5<sup>TH</sup> CIR. R. 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

Almost a year later, after he had appealed the judgment entered on the verdict, Banning filed a motion to set aside the verdict on the ground of alleged fraud and also filed an affidavit alleging bias on the part of the district judge. The district court denied the motion to set aside and took no action on the affidavit of bias. Subsequently, this court affirmed the judgment based upon the verdict.

In this second appeal, taken from the order denying the motion to set aside the judgment and from the failure of the district court to disqualify itself, Banning raises the same issues addressed in our opinion in the first appeal. *See Banning v. State Farm Fire & Casualty Company*, No. 91-6061 (5th Cir. Nov. 23, 1992) ("Banning alleges that the district court improperly excluded evidence, that State Farm perpetrated fraud on the court by tendering in evidence a false insurance application, and that State Farm's attorney misquoted witnesses in his closing argument." (Footnote omitted.)). The only thing new in this second appeal is the assertion that the district judge was biased, but by waiting until a year after trial to raise the issue, Banning has waived it by his tardiness. Moreover, Banning asserts nothing new in his "affidavit of bias"; he only raises again the alleged errors that he urged unsuccessfully in the first appeal.

Accordingly, Banning raised no issue of merit in this appeal. The appeal is frivolous, and it is hereby DISMISSED pursuant to 5TH CIR. R. 42.2.